

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

The Interpretation of Section 271 of the
Telecommunications Act of 1996 as to
Whether the Statutory Listing of Loops and
Transport Includes the Requirement that
Existing Dark Fiber Be Made Available to
Competitors

WC Docket No. 10-14

COMMENTS OF AMERICAN FIBER SYSTEMS, INC.

The Maine Public Utilities Commission ("MPUC") urges the Commission to make a determination as to whether items four and five of the "competitive checklist" set out in 47 U.S.C. §271(c)(2)(B)(iv),(v) require a Bell Operating Company ("BOC") to provide line sharing and make dark fiber transport and entrance facilities available to competitors. For the reasons set forth below, American Fiber systems, Inc. ("AFS") supports the Comments filed by AT&T¹ and Verizon² in this Docket and agrees with their position that the Commission should conclude that Section 271 of the Communications Act of 1934, as amended does not require the Bell Operating Companies ("BOC") to demonstrate that they are providing or offering line sharing and access to dark fiber loops and transport, that this determination had already been made clear and unambiguous by the Commission, and that the Commission should deny the MPUC's petition accordingly.

DISCUSSION

1. THE COMMISSION'S PAST ACTIONS HAVE MADE IT CLEAR THAT A PLAIN TEXT READING OF CHECKLIST ITEMS FOUR AND FIVE UNDER SECTION 271 DOES NOT DISCLOSE A REQUIREMENT THAT A BOC PROVIDE UNBUNDLED DARK FIBER LOCAL LOOPS OR TRANSPORT

¹ Comments of AT&T Inc. on the Petition of the Maine Public Utilities Commission, WC Docket No. 10-14, March 1, 2010

² Comments of Verizon, WC Docket No. 10-14, March 1, 2010

47 U.S.C. §271(c)(2)(B)(iv) requires any BOC which has obtained long-distance authority to provide to its competitors access to transmission via unbundled local loops between a customer premise and their central office. To the extent that dark fiber cannot by its very nature provide any form of "transmission," unless and until it is connected to the necessary electronics, then on its face dark fiber clearly falls outside the requirement of 47 U.S.C. §271(c)(2)(B)(iv), i.e. Sec. 271 checklist item four.

Similarly, checklist item five, 47 U.S.C. §271(c)(2)(B)(v) requires a BOC to provide access to local transport from the trunk side of a wireline local exchange carrier switch. Again, stand alone dark fiber, without being connected to the appropriate electronics, fails to qualify as "transport", whether from the trunk side of a wireline local exchange carrier switch, or from any other point of connection.

Previous Commission determinations that the BOCs were required to offer dark fiber as an unbundled network element ("UNE") under the Section 271 competitive checklist are relevant only insofar as the BOCs had an obligation under checklist item two which incorporated the Commission's rules under 47 U.S.C. §251 to provide nondiscriminatory access to network elements, and the Commission Orders granting Section 271 relief during the time period in which dark fiber was available as a UNE recognized that the BOCs satisfied these obligations to provide dark fiber and line sharing by complying with the requirements of Section 251. There is no independent basis under checklist items four and five to require BOCs to provide line sharing or dark fiber.

2. REQUIRING BOC LINE SHARING AND ACCESS TO DARK FIBER TO BE MADE AVAILABLE WOULD STIFLE INFRASTRUCTURE INVESTMENT AND RUN COUNTER TO THE COMMISSION'S GOAL AND THE GOAL OF THE TELECOMMUNICATIONS ACT OF 1996 OF ENCOURAGING FACILITY-BASED COMPETITION

One of the main purposes of the 1996 Act was to stimulate facilities-based competition. As set forth in the Verizon comments dollars invested and fiber miles deployed, by both BOCs and competitive carriers, have increased significantly under the existing regulatory regime. To

now interpret checklist items four and five to require the BOCs to provide line sharing and dark fiber would stifle the incentive to invest in deploying infrastructure and thus slow the pace of competition and innovation.

Quite simply, AFS submits that none of the arguments put forth by the MPUC should move the Commission to abandon its past, well-considered conclusion that requiring the providing of line sharing and dark fiber loops under items four and five of the checklist is not consistent with the sound policy of encouraging facilities-based competition.

CONCLUSION

For the foregoing reasons, the Commission should deny the MPUC's petition.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Bruce T. Frankiewicz", is written over a horizontal line.

Bruce T. Frankiewicz

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